Canada Agricultural Review Tribunal

2012-2013
Annual Report

Table of Contents

Message from the Chairperson 3
- Tribunal Activities 3
- Increasing Workload, Decreasing Costs 3
- Moving Forward 3

Understanding the Tribunal Better 4
- Vision 4
- Mission 4
- Tribunal in the Canadian Legal System 4
- Authorized Locations for Tribunal Hearings 5
- Functions of the Tribunal 6
- Mandate 6

2012-2013 in Review at the Tribunal 7
- Making Quasi-judicial Decisions (Including Procedural Matters) 7
- Managing Registry Services, Operations and Administration 9
- Enhancing Tribunal Identity, Outreach and Education 10
- Developing Best Practices 13
- Building Relationships and Evaluating Performance 14

Tables and Graphs 2012-2013 16
- Tribunal Decisions – By Respondent Party 16
- Tribunal Caseload – Total of Active Cases, Admissible Cases and Decisions 16
- Tribunal Decisions – By Language, by Respondent, by Result 17
- Number of Oral Hearings vs. Average Cost per Oral Hearing 19
- Case Samples 20
- Tribunal Expenditures 20

Challenges, Opportunities and Contacting the Tribunal 21
- Challenges and Opportunities 21
- How to Reach the Tribunal 22

Message from the Chairperson

It was an exciting year at the Tribunal. The 2012-2013 Annual Report of the Canada Agricultural Review Tribunal, the fifth issued since my assuming the position of Chairperson, tries to capture and relay that excitement. I hope you will take a few minutes to review with us our activities and achievements from the period April 1, 2012 to March 31, 2013.

Tribunal Activities

As in past years, the activities of the Tribunal focus upon one core activity: making quasi-judicial decisions following reviews of Agency-issued Notices of Violation and of Ministers' decisions involving administrative monetary penalties (AMPs). We also engage in four key supporting activities: (1) managing registry services, operations and administration; (2) enhancing Tribunal identity, outreach and education; (3) developing best practices; and (4) building relationships and evaluating performance.

Increasing Workload, Decreasing Costs

The Tribunal has achieved much over the past 12 months. It continues to efficiently deliver more timely decisions to its stakeholders than in the past. Again this year, the Tribunal's caseload increased dramatically with over 25% more cases than last year which represents almost a 100% increase of caseload over the past two years! This fiscal year the Tribunal issued 15% more decisions than last year, while decreasing the average cost per oral hearing by 46%. An independent performance evaluation disclosed high levels of stakeholder satisfaction with Tribunal services.

As noted, the Tribunal is evolving. Fiscal year 2012-2103 saw the number of Tribunal decision-makers double with the three-year appointment in late June 2012 of Dr. Bruce La Rochelle as a part-time member. During the year he rendered 20% of the Tribunal's decisions and his presence has been a welcome addition to the Tribunal's 'bench' strength. As well, the Tribunal was blessed this past year with a fabulous team of student interns—11 in total—whose enthusiasm, insight and cooperative assistance permitted the completion of projects that the Tribunal would not have otherwise been able to complete, let alone undertake.

Moving Forward

I am looking forward to the Tribunal's activities in fiscal year 2013-2014. With the realization of continuing efficiencies and enhanced human resource allocations on the horizon, the Tribunal will continue to provide stakeholders with quality and impartial rendering of decisions in a timely manner. As our caseload increases, —up almost 30% this fiscal year from last fiscal year—the Tribunal is well-situated, with competent decision-makers, an excellent registry staff and eager student interns, to respond to the challenges ahead.

Dr. Donald Buckingham, Chairperson
June 30, 2013

Understanding the Tribunal Better

Vision

The vision of the Tribunal is to safeguard the integrity of the AMP systems used by federal agencies to ensure compliance with agriculture and agri-food statutes. The Tribunal acts to balance the rights of persons with those of Canadians as a whole while protecting the health and well-being of Canadian consumers and enhancing the economic vibrancy of Canadian agriculture.

The Tribunal's **values:**

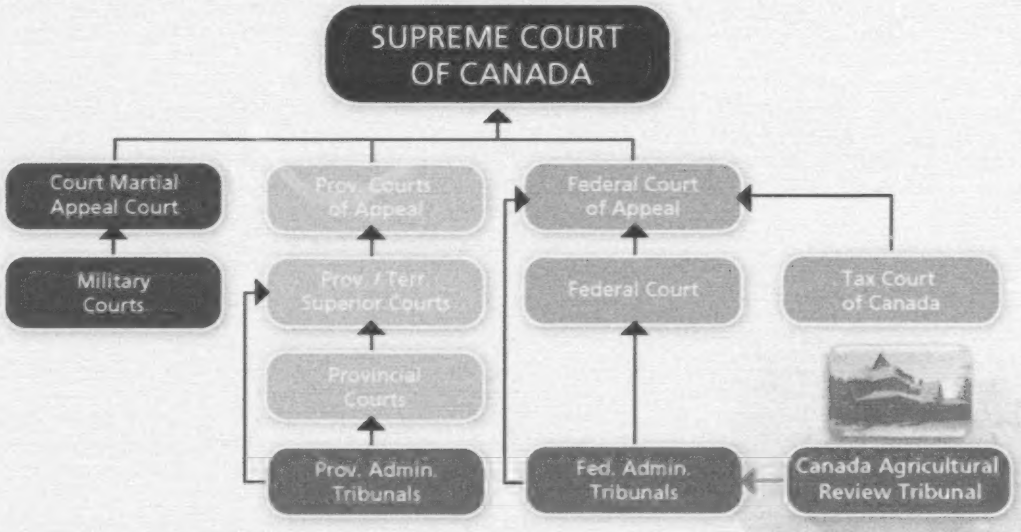
Accessibility, accountability, diligence, effectiveness, efficiency, fairness, integrity, stewardship, risk management, timeliness, and transparency

Mission

The mission of the Tribunal is to provide an independent, fair, informal and timely review of the validity of administrative monetary penalties issued to any person by a federal agency under the AMP Act.

Tribunal in the Canadian Legal System

The Tribunal occupies a humble position in the Canadian legal system. However, its role is important to those Canadians whose actions are challenged by federal food and agriculture enforcement agencies. The Tribunal represents a cost-effective, informal legal process for Canadians to have access to a fair and impartial legal forum to address their concerns. If either party is unsatisfied with the Tribunal's decision, that party may wish to proceed for judicial review of the decision to the Federal Court of Appeal.



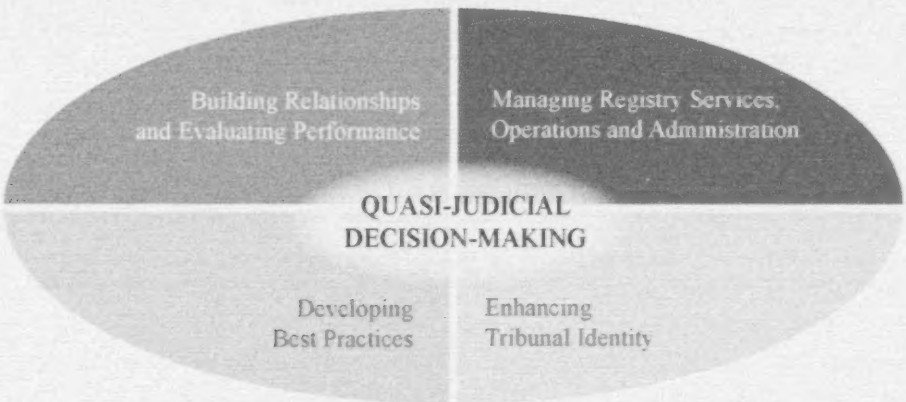
Authorized Locations for Tribunal Hearings

Province	Hearing Locations
British Columbia	Castlegar - Cranbrook - Fort Nelson - Fort St. John - Kamloops - Kelowna - Nanaimo - New Westminster - Penticton - Prince George - Prince Rupert - Victoria - Vancouver - Williams Lake
Alberta	Calgary - Edmonton - Grand Prairie - Jasper - Lethbridge - Medicine Hat - Red Deer - Wainwright
Saskatchewan	Estevan - Prince Albert - Regina - Saskatoon - Swift Current - Yorkton
Manitoba	Brandon - Dauphin - Morden - Winnipeg
Ontario	Barrie - Belleville - Brampton - Brockville - Cornwall - Hamilton - Kenora - Kingston - Kirkland Lake - Kitchener - London - Niagara Falls - North Bay - Ottawa - Owen Sound - Pembroke - Peterborough - Sarnia - Sault Ste. Marie - St. Catharines - Sudbury - Thunder Bay - Timmins - Toronto - Windsor
Quebec	Baie-Comeau - Chicoutimi - Drummondville - Granby - Malbaie - Matane - Montréal - Rimouski - Québec City - Rivière-du-Loup - Rouyn-Noranda - Sept-Îles - Sherbrooke - Saint-Jovite - Thetford Mines - Trois-Rivières - Val-d'Or - Valleyfield
New Brunswick	Bathurst - Campbellton - Edmundston - Fredericton - Moncton - Saint John
Nova Scotia	Halifax - Liverpool - Digby - New Glasgow - Springhill - Sydney - Truro
Newfoundland	Corner Brook - Gander - St. John's
P.E.I.	Charlottetown - Summerside
Yukon	Whitehorse
Northwest Territories	Yellowknife
Nunavut	Iqaluit

Functions of the Tribunal

The core activity of the Tribunal is to provide a quasi-judicial review of an applicant's request for review of: (a) an Agency's Notice of Violation; or (b) a Minister's decision regarding the validity of a Notice of Violation specified under the *Agriculture and Agri-Food Administrative Monetary Penalties (AMP) Act and Regulations*[1].

While the bulk of the Tribunal's operational mandate is the provision of quasi-judicial decisions following reviews of Agency-issued Notices of Violation and of Ministers' decisions involving AMPs, it is also imperative that the Tribunal carries out four ancillary functions, as depicted below, to support and achieve its operational mandate. In the pages that follow, each of these Tribunal activities will be presented in terms of accomplishments in 2012-2013.



Mandate

The Tribunal is an independent, quasi-judicial body established by Parliament under the *Canada Agricultural Products Act* and the *AMP Act*. It maintains an independent and arm's length relationship from Agriculture and Agri-Food Canada and its Minister. Moreover, no member of the Tribunal may concurrently hold employment in the federal public administration. As well, the Tribunal is a court of record and has an official seal that is subject to judicial notice.

CFIA, **CBSA**, **PMRA**, and certain decisions of the **Minister of Health** and the **Minister of Agriculture & Agri-Food** fall under the Tribunal's review jurisdiction.

The Tribunal's primary role is to provide independent oversight, through the exercise of its review jurisdiction, of federal agencies' and Ministers' AMPs enforcement decisions against persons for agriculture and food violations. Federal agencies, including the Canadian Food Inspection Agency (CFIA), the Canada Border Services Agency (CBSA) and the Pest Management Regulatory Agency (PMRA), use AMPs as part of their escalating scale of enforcement providing an expeditious, non-punitive means to promote regulatory compliance. The Tribunal provides oversight of the use of AMPs by giving alleged violators a forum to challenge the validity of such sanctions against them.

[1] While it is still possible under the *Canada Agricultural Products Act* for the Tribunal to be requested to review decisions of the Board of Arbitration, such a request has not been brought before the Tribunal in almost 10 years, nor is the Board of Arbitration, to the knowledge of the Tribunal, currently staffed.

2012-2013 in Review at the Tribunal

As in past years, the activities of the Tribunal primarily focus upon one core activity: making quasi-judicial decisions following reviews of Agency-issued Notices of Violation and of Ministers' decisions. The Tribunal also performs four supporting activities: (1) managing registry services, operations and administration; (2) enhancing Tribunal identity, outreach and education; (3) developing best practices; and (4) building relationships and evaluating performance. The above functions are more fully described below under the following headings:

- Making Quasi-judicial Decisions
- Managing Registry Services, Operations and Administration
- Enhancing Tribunal Identity, Outreach and Education
- Developing Best Practices
- Building Relationships and Evaluating Performance

Making Quasi-judicial Decisions (Including Procedural Matters)

Overall caseload

The overall caseload at the Tribunal has risen dramatically over the past two years, up almost 100% in 2012-2013 from what it was in 2010-2011. Over the course of the fiscal year 2012-2013, the Tribunal had an active caseload of 122, up from 95 in 2011-2012 and from 62 in 2010-2011. Of the total active cases in 2012-2013, 9 were inadmissible (7%) for procedural reasons, down from 16 inadmissible cases (17%) in fiscal year 2011-2012. Of the remaining 113 cases, applicants elected to proceed by oral hearing in 73 cases (65%) and by written submissions in 40 cases (35%).

Procedural matters

Since January 2011, the Tribunal has collected statistics to monitor its activities with respect to procedural motions, that is, the quasi-judicial decisions by the Tribunal to resolve issues raised by the applicant, the Agency or the Minister which are necessary to advance a case to the point where the Tribunal renders its decision. This year between April 1, 2012 and March 31, 2013, the Tribunal received and resolved 73 procedural requests involving matters such as initiation of requests for review, requests for extensions of time to file documents, requests for postponements, questions concerning official languages and various other procedural matters requiring directions from the Tribunal.

Oral hearings

The Tribunal this year conducted 24 oral hearings in seven cities across Canada: 10 in Montreal, five in Toronto, five in Ottawa, and one in each of London, Vancouver, Nanaimo and Regina. This was a significant increase of 71% from the number in 2011-2012. During 2012-2013, travel and hearing costs were reduced, both in absolute terms, and in terms of costs per hearing. Cost reductions are attributable in part to several Tribunal initiatives, including scheduling more than one oral hearing on the same day or during the same trip to a hearing location and taking advantage of opportunities, wherever possible, to public courtrooms for hearings, rather than commercial locations or hotel meeting rooms.

507. The total pages of text for the 30 decisions issued by Tribunal in 2012-2013

Decisions

In the fiscal year 2012-2103, the Tribunal issued 30 decisions, an increase of 15% from 2011-2012. Of these 30 decisions, 16 were requests for review stemming from CBSA-issued Notices of Violation, 9 were requests for review stemming from CFIA-issued Notices of Violation, and 5 were requests for reviews of a Minister's decision concerning the validity of a Notice of Violation. Of the decisions issued, the Tribunal issued decisions dismissing 53% (16 of 30) of these requests for review. Of these 30 decisions, it was almost split equally between those applicants who choose English (53% or 16 of 30) as opposed to French (47% or 14 of 30) as the language of the proceeding before the Tribunal. With respect to choice of proceeding, 17 of the 30 proceeded by oral hearing while the other 13 applicants elected to proceed by written submissions alone.

2012-2013 hearing locations: Vancouver, BC., Nanaimo, BC., Regina, SK., London, ON., Toronto ON., Ottawa, ON., Montreal, QC.

As disclosed in the 2011-2012 Annual Report, the Tribunal established, for the first time, performance standards for issuance of its decisions. In particular, the Tribunal established a standard that decisions in relation to oral hearings should be rendered within 120 days from the hearing date, while decisions in relation to cases proceeding by written submissions should be rendered within 180 days from the close of pleadings. With respect to procedural motions, the Tribunal established a standard that decisions on such motions should be rendered within 30 days of receipt of the motion request. During 2012-2013, the Tribunal met and frequently exceeded performance targets for most of its decisions with only five of the 30 decisions on the merits falling outside the performance standards range. With respect to the 73 procedural motions that came before the Tribunal this fiscal year, the Tribunal met its performance standards in relation to all but three such motions.

Oversight by the Federal Court of Appeal

At the initiative of an applicant, a respondent Agency or a Minister, decisions of the Tribunal are reviewable by the Federal Court of Appeal. In addition, on its own initiative, the Tribunal may refer a matter to the Federal Court of Appeal, for direction. Decisions of the Federal Court of Appeal are therefore vital to the future direction of Tribunal jurisprudence.

During 2012-2013, one reference decision was issued by the Federal Court of Appeal in the case of *In the matter of Section 14 of the Agriculture and Agri-Food Administrative Monetary Penalties Regulations* (rendered April 26, 2012) 2012 FCA 130. In that case, the Federal Court of Appeal held that the AMP Regulations currently do not permit the Tribunal to accept requests for review filed with the Tribunal by ordinary mail, even if mailing has been timely, as the AMPS Regulations do not include filing a request for review by ordinary mail as one of the prescribed methods for filing such requests.

With respect to Federal Court of Appeal decisions on judicial reviews of Tribunal decisions, no decisions were issued by the Court during the 2012-2013 fiscal year, and no decision was outstanding from earlier fiscal years. However, three applications for judicial review of Tribunal decisions to the Court were initiated during 2012-2013. Decisions from those cases remain outstanding at the time of issuance of this Annual Report. The three applications for judicial review are as follows:

- *A-445-12 Clare v. AG (Canada)[CFIA]* (filed October 19, 2012) was filed by the applicant Clare, challenging the Tribunal's decision that his request for review was inadmissible due to the filing of the request after the regulatory deadline.
- *A-557-12 AG (Canada)[CBSA] v. Vorobyov* (filed December 20, 2012) was filed by the respondent CBSA, challenging the Tribunal's decision that the Agency's involvement in the rendering of decisions on behalf of the Minister of Agriculture and Agri-Food is invalid and unauthorized, involving a legally impermissible delegation of authority.
- *A-55-13 AG (Canada)[CBSA] v. Castillo* (filed February 08, 2013) was filed by the respondent CBSA, challenging the Tribunal's decision that the Agency did not prove, on a balance of probabilities, all of the essential elements of the alleged violation, specifically the causal link between the applicant and the fact that meat was found in his suitcase.

In **2012-2013**, Tribunal Members travelled **28,869 kilometres** to preside over 24 oral hearings in 7 cities.

Managing Registry Services, Operations and Administration

Registry services

In 2012-2013, a major innovation was the streamlining of the registry services office at the Tribunal. Due to staff changes and corporate reorganization, three separate positions which had formerly existed for registry services were blended into one new combined position of Coordinator of Administration, Financial and Registry Services. This streamlining achieved a centralization of tasks and realized important efficiencies while reducing unnecessarily duplication of services that had existed at the Tribunal.

Operations and administration (including finances and human resources)

While grateful to receive special financial assistance from the Ministry of Agriculture and Agri-Food this past fiscal year to continue its Procedural Renewal Project, the Tribunal continues to reduce overall expenditures. One full-time indeterminate position was eliminated this past year and two other indeterminate positions remain unfilled at the Tribunal. The Tribunal was fortunate to be able to secure temporary or casual help to meet workload requirements during high demand periods. As is highlighted elsewhere in this Annual Report, student interns and Federal Student Work Experience Program (FSWEP) students continue to come to the Tribunal to obtain interesting real workplace experience of a legal and non-legal nature. Ongoing access to third party legal services, secured through a competition process, continues to be important to the minimization of legal risk associated with the day-to-day and longer-term operations at the Tribunal, whether of an adjudicative, procedural, policy or administrative nature.

Enhancing Tribunal Identity, Outreach and Education

Tribunal identity

The enhancement of the Tribunal's identity within the federal government, among stakeholders seeking or affected by the Tribunal's quasi-judicial decisions and among Canadians generally, requires both a strong physical and electronic presence. The physical presence of the Tribunal remains its premises at Building 60 on the Central Experimental Farm in Ottawa and its personnel, who conduct hearings, receive requests for review and other procedural requests and who interact with various government departments.

The Tribunal continues to develop an enhanced electronic presence as well. The principal means of an electronic presence is through its website: http://cart-crac.gc.ca. A major initiative that was commenced during 2012-2013 is the migration of the current website, in accordance with Government of Canada directives, to a totally revamped version consistent across government institutions. This revamped version will debut in fiscal year 2013-2014 and will allow the Tribunal to better serve all parties coming before it.

Outreach

This past year, the Chairperson, as Chief Executive Officer of the Tribunal, continued his efforts with various stakeholders, including the office of the Minister of Agriculture and Agri-Food, Portfolio Coordination at his Department, senior officials at Agriculture and Agri-Food Canada and various officials in Central Agencies of the Government of Canada to develop cooperative operational and administrative relationships while concurrently maintaining the Tribunal's arm's length relationships and independence.

As well, the Tribunal continues to utilise new media in additional to its website, as means to reach out to Canadians. A page about the Tribunal now appears on Wikipedia. While not an official Tribunal page, Tribunal personnel do monitor the entry to ensure that its contents are accurate. Consistent with the emerging practices of other Government of Canada agencies and departments, the Tribunal also has initiated its use of social media through a Twitter account. Managed by Tribunal personnel, the Tribunal is able to 'tweet' news concerning the release of decisions or other matters which can then be reviewed by its 'followers'. This service will benefit parties who are frequently before the Tribunal as well as those who require quick access to updates.

You can follow the Tribunal's activities at **http://twitter.com/cart_crac**

Education

Continuing education of Tribunal personnel remains a priority. This year personnel, as part of their performance agreement and learning plans, attended programs to advance career goals and to enhance knowledge. Chairperson Buckingham attended three continuing legal education conferences—Osgoode Professional Development Continuing Legal Education "The Chairs' Leadership Forum" (Toronto, April 4-5, 2012), Council of Canadian Administrative Tribunals Annual Conference "Mapping New Frontiers: The Good, the Bad and the Ugly of Administrative Justice" (Calgary, May 13-25, 2012) and Osgoode Professional Development Continuing Legal Education and the Society of Ontario Adjudicators and Regulators "Administrative Justice Ethics Webinar

Series" (from Toronto via the Internet, November 26 - December 13, 2012). Member La Rochelle attended two continuing legal education conferences—Osgoode Professional Development Continuing Legal Education "The 8th Annual National Forum on Administrative Law & Practice" (Toronto, October 23-24, 2012) and the Heads of Federal Administrative Tribunal Forum "Tribunal Member Training Seminar" (Ottawa, November 5-9, 2012). Member La Rochelle also provided an in-house continuing legal education presentation to Tribunal personnel on "Standards of Review from *Dunsmuir* and Beyond" on January 8, 2013. Administration, Financial and Registry Services Coordinator Sabourin attended two administration training seminars from The Commons Institute "Mastering WORD 10.0" (Ottawa, May 14-19, 2012) and "Becoming an Effective Minute-Taker" (Ottawa, June 20, 2012). In 2012-2013, Ms. Sabourin was also the recipient of an Agriculture and Agri-Food Canada Instant Award for "outstanding, continuous and conscientious completion of dossier management and decision issuance at the Canada Agricultural Review Tribunal".

Students and the Tribunal's Internship Program

The Tribunal was blessed again this year, as in past years, with a strong contingent of eager students who come as unpaid interns to experience professional life at the Tribunal. As noted on the Tribunal's website[2], where its internship program is announced:

"*The small team at the Tribunal welcomes eager students seeking a real-life experience in a functioning administrative tribunal environment to work alongside the Chairperson and Tribunal staff, assisting in completing research assignments, special projects and other daily office duties pertaining to the operation of the Tribunal. In addition, the intern will experience interactions with government departments, particularly Agriculture and Agri-Food Canada, as well as other government agencies. The intern will also learn the basic skills of working in an office and the role that the Tribunal plays within the Canadian government at large. The experience will provide the intern with pertinent education and work experience for academic credit at their home university but will not include any remuneration from the Tribunal or the Government of Canada. Interns may work at the office of the Tribunal, on the Central Experimental Farm in Ottawa, or externally.*"

In 2009, the Tribunal welcomed its **1st** student; during the past fiscal year, **11** students were involved at the Tribunal

In 2012-2013, 11 students contributed to professional life at the Tribunal. The Tribunal's fall intern was Islam Baba (Université du Québec en Outaouais); he worked on projects relating to the Tribunal's transparency. In the spring term, the Tribunal welcomed Alexandre Lillo, from France's AgroParisTech in Montpellier. Mr. Lillo as part of his Master's degree in Water Law is required to complete a six-month externship in France or abroad and he chose the Tribunal as a place where he could learn, study and write about comparative aspects of Canadian and French agricultural law. Rita Asangarani (University of Ottawa) and Sarah Berger Richardson (McGill University) were articling students whose principals concluded agreements with the Tribunal to enable both articling students to attend at the Tribunal for several weeks to observe and participate in the practices and procedures of an administrative tribunal in action. Priyanka Vittal and Anca Petrescu completed, for credit at University of Ottawa, legal memorandums regarding research and procedural work. Karen Croteau, Kevin Driscoll, Jim Melanson, and Christine Vaillancourt, all in the Graduate Diploma in Public Policy and Program Evaluation at Carleton University, developed evaluation and performance measures for the Tribunal. Finally, Jonathan Sampson (University of Ottawa) is currently part of the Tribunal's students through the Federal

[2] For more information: http://cart-crac.gc.ca/CART-CRAC/display-afficher.do?id=1298319679727&lang=eng

Staff meeting – Dr. Don Buckingham, Jonathan Sampson and Alexandre Lillo working at a team meeting

Student Work Experience Program (FSWEP). It is truly a pleasure to welcome these students to the Tribunal as they complete work of great value to the Tribunal and bring energy and enthusiasm to the Tribunal workplace.

What have recent interns said about their time at the Canada Agricultural Review Tribunal?

"As a third-year law student, I chose to work at this tribunal due to my interests in administrative law, regulatory issues and food law and policy. I was able to research tribunal jurisprudence, legislation and regulations, draft legal memoranda and even attend a tribunal hearing. Most importantly, I felt like there were clear expectations of the work that was assigned to me and the mentorship and feedback I received after completing the assigned tasks gave me insight into the practical aspect of legal work. I thoroughly enjoyed this experience since I was able to improve my legal skills, get great exposure to the areas of law I was most interested in and feel included within the team itself".

Anca Petrescu, Intern, Fall 2012

"A wonderful experience in the behind-the-scenes workings of an administrative tribunal, which I greatly enjoyed. The experience has not only provided me with a practical understanding of administrative law, but it has also exposed me to the intricacies of Canada's agricultural regulatory system. The work involved a combination of challenging research prospects, out-of-the-box projects, and opportunities to work closely with the members, while the Tribunal environment itself provided an excellent support staff, approachable mentors, and beautiful green scenery."

Rita Asangarani, Articling Student, Spring 2013

" The Tribunal environment itself provided an excellent support staff, approchable mentors and beautiful green scenery."

–Rita Asangarani

"As a student with an interest in the intersection of agricultural law and food security, working at the Canada Agricultural Review Tribunal provided me with invaluable insight into the regulatory framework governing agriculture and agricultural products in Canada. I was fortunate to work on a variety of projects, from legislative drafting, to attending hearings, to contributing to a Practice Note on admissibility. The work was challenging and stimulating, and the environment was supportive and inspiring. My experience at CART has been one of the highlights of my articles."

Sarah Berger Richardson, Articling Student, Spring 2013

Interns – Sarah Berger Richardson, Alexandre Lillo and Rita Asangarani

First, I would like to thank the personnel of the Tribunal, especially Dr. Buckingham, for kindly offering me this professional experience. Next, I would like to point out the high level of care and attention provided by Tribunal personnel to each student who comes to the Tribunal. I found myself instantly at ease at the Tribunal and Tribunal personnel were always there to answer my questions or to provide me with information as needed. I am extremely grateful to have had this opportunity to enrich my legal knowledge, as well as to deepen my interactions with fellow professionals, while at the Tribunal.

Alexandre Lillo, Intern, Spring/Summer 2013

Developing Best Practices

Transparency

The Tribunal continued in 2012-2013 to upgrade accessibility to Tribunal documentation. Tribunal decisions can be accessed anytime by the public in both official languages at its website http://cart-crac.gc.ca. A new feature of the website, under the "Decisions" page, is a "Recent News" section which includes a current listing of all "Upcoming Scheduled Hearings" and several other items of interest and importance for stakeholders.

Access for self-represented litigants

Based on a review by the Tribunal of oral hearings it conducted in 2012-2013, 88% of applicants and 75% of government respondents appearing before the Tribunal were self-represented or were represented without a practising lawyer. Litigants before the Tribunal without legal training often encounter difficulties managing the various stages of a case, including what to set out in their initial request for review document to how to present their case at an oral hearing. To address these matters, Tribunal personnel have put significant effort this year into the creation of the plain language *User Guide for Self-Represented Litigants (Guide)*. Tribunal personnel, including our student interns and articling students, completed comparative studies of what other tribunals and courts in Canada are doing to address concerns in relation to self-represented parties. With that information and by referencing specific procedures and issues arising from the Tribunal's own jurisdiction and practice, staff and members substantially completed the draft *Guide* by the end of the 2012-2013. The official, final version of the *Guide* will be made available during the fiscal year 2013-2014. To avoid excessive publication costs, the *Guide* will be predominantly available as an online resource at the Tribunal's website http://cart-crac.gc.ca.

Procedural Renewal Project

In 2011-2012, Tribunal personnel commenced an ambitious project to completely review and, where necessary, renovate the procedural rules of the Tribunal. The existing *Rules of the Review Tribunal (Agriculture and Agri-Food)* which for different matters complement or contradict existing AMP Regulations, were drafted

over a decade ago and require significant changes to both permit the Tribunal to operate more effectively and to provide stakeholders with more procedural clarity. Funding for this initiative was provided by the Ministry of Agriculture and Agri-Food which enabled the Tribunal to engaged the services of the Ministry of Justice's legislative drafters to complete the formal drafting of the new rules. In 2013-2014, it is anticipated that the new rules will, following a period of public comment and presentation to the Minister and Cabinet, be approved and come into force.

Building Relationships and Evaluating Performance

Building relationships

During 2012-2013, in addition to fostering relationships with the office of the Minister of Agriculture and Agri-Food, Portfolio Coordination at his Department, senior officials at Agriculture and Agri-Food Canada and various officials in Central Agencies, the Chairperson enhanced relationships with colleagues in the federal family of agencies, boards and tribunals. He actively attended monthly meetings of the Community of Heads of Federal Agencies, became the Vice-Chair of the Heads of Federal Administrative Tribunals Forum, and was nominated to become the National Co-chair of the Council of Canadian Administrative Tribunals 2014 Annual Conference to be held in Gatineau, Quebec in June 2014.

Other important relationships developed in 2012-2013 were those that Tribunal personnel built or deepened with supervisors and officials at each of the sending institutions in Ontario, Quebec and France of student interns placed at the Tribunal. This tradition will continue in 2013-2014, when the Tribunal will liaise with another institution, the Law Society of Upper Canada, as the Tribunal welcomes, for the first time, a full-time articling student under Law Society regulations. The Chairperson will act as the articling student's principal and will, as a result, have to attest to the Law Society that he has mentored the articling student so that the student develops strong legal skills and a sound appreciation for the Law Society's Code of Professional Conduct.

Evaluating performance

No program development or renovation project is complete without some objective evaluation of the changes undertaken. This year, the Tribunal was privileged to have the energy, enthusiasm and professionalism of four graduate students from Carleton University's Graduate Diploma in Public Policy and Program Evaluation complete a detailed study of the Tribunal's performance since 2009. As the results of their study are set out in another section of this report, suffice it to say that the Tribunal was pleased to assist the group in carrying out this study and was appreciative of the group's findings which indicate that the Tribunal is extremely effective in carrying out of its core mandate and supporting activities.

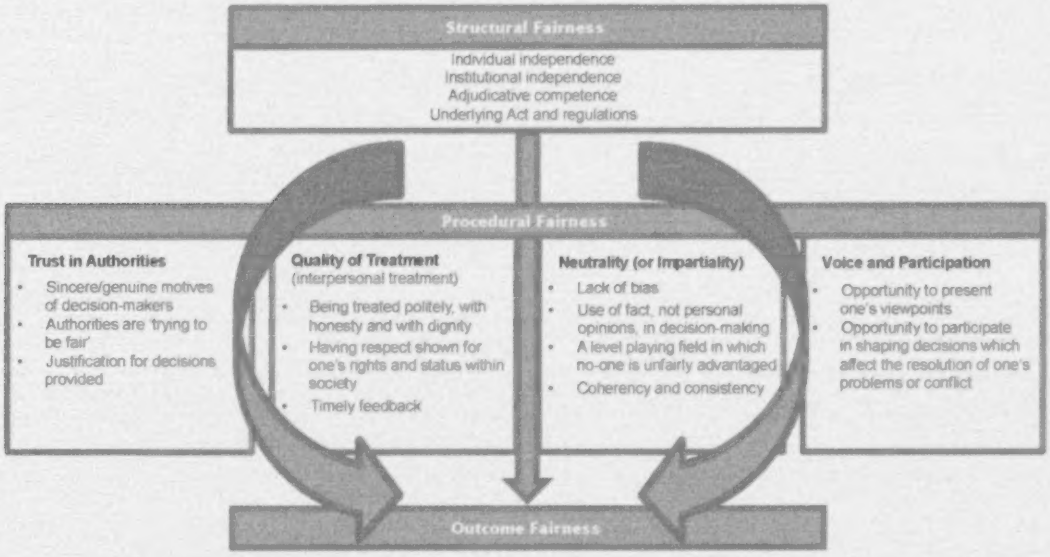
Karen Croteau and Christine Vaillancourt of Carleton University [Kevin Driscoll and Jim Melanson from team missing], presenting their evaluation report to Tribunal personnel

The students, who completed the study as a component of their graduate degree program, commenced their research at the Tribunal in 2011 and completed it with a presentation of their findings to Tribunal staff in 2013. Their project model and findings are set out in summary form in the next section.

Carleton students' performance evaluation

In August 2011, the Tribunal collaborated with the Carleton University School of Public Administration to undertake a first evaluation, to be executed by a team of graduate students from the Public Policy and Program Evaluation Diploma program.

A theory-based approach was selected for the evaluation where a summary of the key dimensions of fairness from published and grey literature was used to develop a conceptual fairness model for the Tribunal. This model has two main elements, one focused on "structural fairness" and one on "procedural fairness." Both were determined necessary in order to support "outcome fairness." The model tested by the evaluation therefore was the extent to which the Tribunal contributes to a perception of fairness, and specifically the extent to which it adheres to the requirements of structural and procedural fairness described in the emerging literature on quasi-judicial bodies.

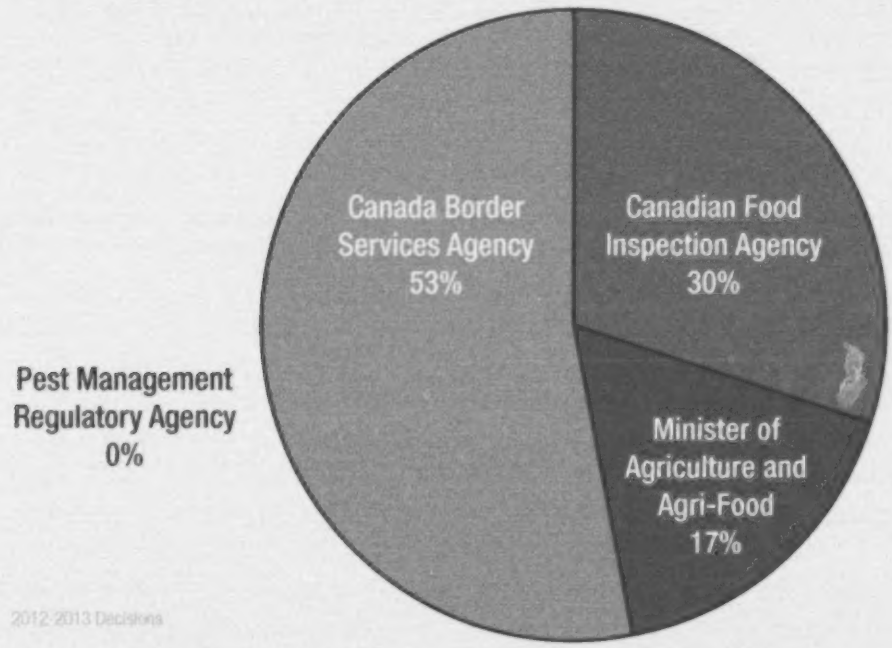

Structural Fairness
Individual independence
Institutional independence
Adjudicative competence
Underlying Act and regulations
Procedural Fairness
Trust in Authorities
Sincere/genuine motives of decision-makers
Authorities are 'trying to be fair'
Justification for decisions provided
Quality of Treatment
(interpersonal treatment)
Being treated politely, with honesty and with dignity
Having respect shown for one's rights and status within society
Timely feedback
Neutrality (or Impartiality)
Lack of bias
Use of fact, not personal opinions, in decision-making
A level playing field in which no-one is unfairly advantaged
Coherency and consistency
Voice and Participation
Opportunity to present one's viewpoints
Opportunity to participate in shaping decisions which affect the resolution of one's problems or conflict
Outcome Fairness

Findings from the study indicated the conceptual model of structural and procedural fairness and the Tribunal's role in contributing to the overall legitimacy of the agriculture and agri-food regulatory system were broadly validated.

Taken together, the legislative and operating arrangements appear to give the Tribunal an appropriate framework for institutional independence. Of the three structural independence elements, it was concluded that individual independence and adjudicative competence are satisfied. For institutional independence, however, some results suggest that this structural element may be perceived to be at risk. The challenge is that a clearer definition of the administrative arrangements is needed to preserve the arm's length relationship, and thus the independence, of the Tribunal.

Tables and Graphs 2012-2013

Tribunal Decisions – By Respondent Party


Canada Border Services Agency 53%
Canadian Food Inspection Agency 30%
Minister of Agriculture and Agri-Food 17%
Pest Management Regulatory Agency 0%
2012-2013 Decisions

Tribunal Caseload – Total of Active Cases, Admissible Cases and Decisions

	2010-2011	2011-2012	2012-2013
Total Active Cases	**62**	**95**	**122**
Cases which were deemed inadmissible by the Tribunal	6	16	9
Total Admissible Cases before the Tribunal	**56**	**79**	**113**
Cases for which a hearing was requested	39	52	73
Hearing not yet scheduled	10	18	35
Hearing scheduled	8	10	6
Hearing completed awaiting decision	0	0	6
Cases withdrawn prior to a hearing	1	10	8
Cases withdrawn at or after hearing	0	0	1
Cases for reconsideration (FCA)	1	0	0
Hearing cases where decision issued	19	14	17

Cases where parties proceeded by written case alone	17	27	40
Cases not yet assigned	4	2	5
Cases assigned, awaiting decision	6	6	11
Cases withdrawn	2	7	11
Written cases where decision issued	5	12	13

Total First Instance Decisions by the Tribunal	**24**	**26**	**30**
Hearing			
Dismissed (decision of Agency upheld)	13	8	10
Allowed (decision of Agency overturned)	6	5	4
Dismissed (decision of Minister upheld)	0	0	0
Allowed (decision of Minister overturned)	0	1	3
Written File			
Dismissed (decision of Agency upheld)	3	10	6
Allowed (decision of Agency overturned)	1	1	5
Dismissed (decision of Minister upheld)	1	0	0
Allowed (decision of Minister overturned)	0	1	2

FCA-Directed Reconsiderations by the Tribunal	**6**	**0**	**0**
Total Decisions Rendered by the Tribunal	**30**	**26**	**30**

Tribunal Decisions – By Language, by Respondent, by Result

	2010-2011	2011-2012	2012-2013
Total number of decisions issued (by language)	**30**	**26**	**30**
From oral hearings	19	14	17
Conducted in English	16	12	10
Conducted in French	3	2	7
From written submissions	5	12	13
Conducted in English	5	8	6
Conducted in French	0	4	7
From reconsiderations from FCA	6	0	0
Conducted in English	5	0	0
Conducted in French	1	0	0

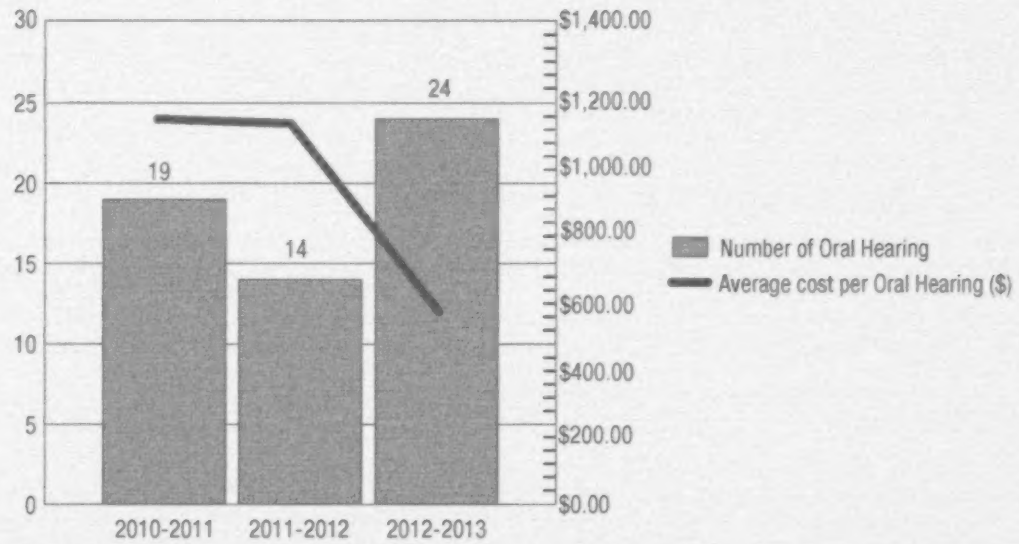
Cont'd Tribunal Decisions – By Language, by Respondent, by Result

	2010-2011	2011-2012	2012-2013
Total number of decisions issued (by respondent)	**30**	**26**	**30**
For review of CFIA decisions	17	11	9
Oral hearings	15	8	1
Written submissions	2	3	8
For review of CBSA decisions	6	12	16
Oral hearings	4	4	13
Written submissions	2	8	3
For review of PMRA decisions	0	1	0
Oral hearings	0	1	0
Written submissions	0	0	0
For review of Minister of AAF's decisions	1	2	5
Oral hearings	0	1	3
Written submissions	1	1	2
From reconsiderations ordered by FCA	6	0	0
Oral hearings	6	0	0
Written submissions	0	0	0

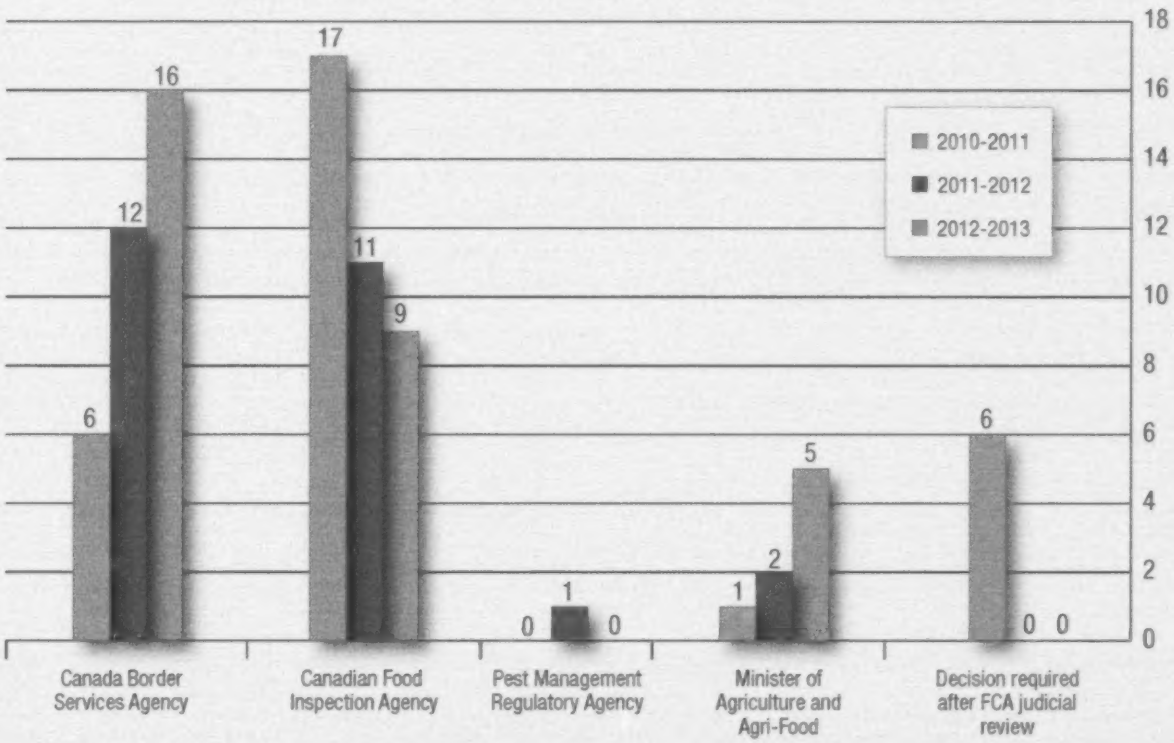
Total number of decisions, other than reconsiderations, issued (by result)	**24**	**26**	**30**
Notices of Violation from CFIA	17	11	9
Upheld by Tribunal	13	8	6
Dismissed by Tribunal	4	3	3
Notices of Violation from CBSA	6	12	16
Upheld by Tribunal	3	10	10
Dismissed by Tribunal	3	2	6
Notices of Violation from PMRA	0	1	0
Upheld by Tribunal	0	0	0
Dismissed by Tribunal	0	1	0
Review Decisions by Minister of AAF	1	2	5
Confirmed by Tribunal	1	0	0
Varied or set aside by Tribunal	0	2	5
Review Decisions by Minister of Health	0	0	0
Confirmed by Tribunal	0	0	0
Varied or set aside by Tribunal	0	0	0

Number of Oral Hearings' vs. Average Cost per Oral Hearing

Amount of Hearing vs. Costs Per Hearing



Decisions, by Respondent, issued by Tribunal over three years



Case Samples

C.F.S. Ltd. v. Canada (Minister of Agriculture and Agri-Food) 2013 CART 1

The applicant, an animal feed manufacturing facility, was unsuccessful after it requested a review of a Notice of Violation in the amount of $5,200 to the Minister of Agriculture and Agri-Food. The Notice of Violation was issued in regards to alleged non-compliance surrounding regulations to prevent the spread of Bovine Spongiform Encephalopathy (Mad Cow Disease). The applicant requested that the Tribunal review the Minister's decision upholding the violation. The Tribunal set aside the Minister's decision holding that the Minister's decision did not meet the required standard of review as set out in the Supreme Court of Canada's case of *Dunsmuir*.

Z.Q. v. Canada (CBSA), 2012 CART 18

A traveller returning from Saudi Arabia was issued a Notice of Violation with an attached monetary penalty of $800 under the *Health of Animals Regulations*. He allegedly imported five cans of condensed milk into Canada without the necessary documentation and without declaring the dairy product at his initial point of entry. The Tribunal held that the Agency had established all the elements of the violation on the balance of probabilities and that the applicant's defence was inadmissible and so the violation and the monetary penalty were upheld.

S.V. v. Canada (Minister of Agriculture and Agri-Food) 2012 CART 25

This case, which was carried out through written submissions, began as a Ministerial review of a Notice of Violation issued to the applicant for allegedly importing an animal-based foot lotion into Canada. After the Minister upheld the Notice, the applicant then requested that the Tribunal review the Minister's decision. The Tribunal set aside the Minister's decision on the basis of that the Agency's involvement in the rendering of decisions on behalf of the Minister of Agriculture and Agri-Food was unauthorized as it involved an invalid delegation of authority. The Agency has since filed to have the the Tribunal's decision reviewed by the Federal Court of Appeal.

Tribunal Expenditures

	2010-2011	2011-2012	2012-2013
Salaries & Benefits	351,971	328,652	342,218
Hearing & Travel Expenses	21,897	15,795	14,600
Property, Equipment Rental & Maintenance	39,037	39,119	39,286
Postage, Courier & Telecommunications	1,833	1,062	55
Publishing, Printing & Outreach	1,801	2,605	4,962
Training, Meetings & Conferences	1,017	3,750	7,832
Professional & Contract Services	71,328	87,189	49,843
Materials, Supplies & Related Misc. Expenses	15,695	13,781	17,818
Total	**504,579**	**491,953**	**476,614**
Special Projects – Procedural Renewal Project Services	0	0	46,000
Grand Total	**504,579**	**504,579**	**522,614**

Challenges, Opportunities and Contacting the Tribunal

Challenges and Opportunities

97%. The increase in caseload coming before the Tribunal between 2010-2011 and 2012-2013.

As the Tribunal looks ahead to 2013-2014, it is confident that it has reached a new level of maturity and sustainability to proactively respond to any challenges it might be facing and to capitalize on the opportunities that it will encounter. Since 2009, the Tribunal has successfully moved from being almost totally unknown in Canada and in the federal family of boards, agencies and tribunals to being readily identifiable by Canadians. The Tribunal's work is also more readily accessible and is in fact more frequently accessed by the public. The Tribunal has also worked tirelessly, with a small but dedicated staff, to renovate procedures and operations at the Tribunal to make it more effective, more efficient and more accessible to all.

The Tribunal is a quality micro-agency which delivers on its promise of quality and timely reviews of administrative monetary penalties issued to Canadians by federal agencies delegated the important task of protecting Canadian agriculture and food systems. Without any change in its basic budgetary envelope, the Tribunal has become, and will continue to become, more transparent, more accountable, more responsive and more efficient. Starting with transparency and accountability, the Tribunal will continue to transform its electronic image via its website making it even more user-friendly and adding features like instant access to recently issued Tribunal decisions, Practice Notes for parties appearing before the Tribunal, and new items of interest to stakeholders.

With respect to responsiveness and efficiency, Tribunal personnel will continue to examine every procedure that the Tribunal uses in carrying out its reviews of Agency and Ministerial decisions to ensure that they provide for procedural fairness while respecting the good use of taxpayer dollars. To this end, the entirety of the Tribunal's Rules of Procedure will be revised to meet the growing demands of the public for better access to, and service from, the Tribunal.

The caseload at the Tribunal has continued to rise over the past four years, putting a certain strain on the ability of the Tribunal to deliver timely decisions. This increasing caseload is only likely to continue with Agencies' increasing use of AMPs. In the coming 2013-2014 fiscal year, the Tribunal will continue to focus on addressing, in an efficient and cost-effective manner, this increasing caseload. As components of such efficiencies, the Tribunal anticipates that its *Guide for Self-Represented Applicants* will be published and that the proposed comprehensive revisions to the Tribunal Rules will receive governmental approval and be implemented. The Tribunal will also continue its publication of Practice Notes, as circumstances arise where published policy positions of the Tribunal are considered to be of benefit to the parties.

These Tribunal plans for transition and sustainability are now firmly in place. Given the structural, procedural and personnel changes that have been implemented over the past four years, this renovation has prepared and propelled the Tribunal into the 21st century with a robustness that makes it now "the little Tribunal that could".

How to Reach the Tribunal

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